



**June 3, 2013**

**Re: Amendments to the 2013 Mortgage Rules under the Real Estate Settlement  
Procedure Act (Regulation X) and the Truth In Lending Act (Regulation Z)**

**Docket No. CFPB-2013-0010**

The Greenlining Institute thanks the Consumer Financial Protection Bureau (CFPB) for this opportunity to comment on issues that directly impact our communities, many of whom were devastated by the mortgage crisis. We offer their perspectives to the CFPB's continuing effort to clarify and refine the final mortgage rules issued in January 2013.

**Who We Are**

Greenlining works to bring the American Dream within the reach of every individual, regardless of race or zip code. Today, the majority of babies born in the United States are non-white. Because people of color will make up the majority of our population by 2050, America will prosper only if communities of color prosper. Our coalition is comprised of over 40 national and statewide organizations, including more than a dozen community-based organizations dedicated to meeting the housing needs of communities of color in our home state of California.

Access to fair lending is a vital lifeline for low-income communities, which are disproportionately minorities. As advocates for some of America's most vulnerable communities, we have recommendations for the CFPB regarding the proposed amendments to the Qualified Mortgages (QM) and the Ability-to-Repay (ATR) rules.



## **Response to Questions Posed by the CFPB in the Proposed Amendment**

### *Encourage States to Enact Additional Protections for their Residents*

As the CFPB noted, RESPA (Regulation X) does not “occupy the field” of mortgage servicing regulation. That is, states are free to enact broader protections for their residents. Greenlining is in favor of the CFPB’s commentary that emphasizes this. We urge states to undertake whatever additional consumer protections are necessary for their own populations.

California, for example, enacted the Homeowners Bill of Rights (HBoR) to ensure fair lending and borrowing practices for California homeowners, enhancing federal mortgage servicing rules and regulations. HBoR successfully leveraged the National Mortgage Settlement servicing rules and made them permanent in California.

### *Broaden the Definition of “Affiliate” for purposes of Small Servicer Status*

Under the 2013 rule, to meet the small servicer test, a servicer and its “affiliates” must not, together, own or originate more than 5,000 mortgage loans. Small servicer status is important because it grants lenders special exemptions to consumer protection rules. Greenlining agrees with the CFPB that this rule must be clarified. And based on the experiences of our communities, we believe it is not inclusive enough.

An affiliate is a company that controls, is controlled by, or is under common control with another company. We suggest that the term affiliate be broadened under the rules to include lenders’ relationships with small brokerage firms. Mortgage brokers can play a dangerous role in steering borrowers toward marked up or otherwise unfavorable loans. Mortgage brokers became the predominant originators of subprime loans, which disproportionately targeted communities of color. In 2005, for example, independent mortgage brokers originated about 65% of all subprime mortgages.<sup>1</sup>

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<sup>1</sup> Antje Bernt, Burton Hollifield, Patrik Sandas. “The Role of Mortgage Brokers in the Subprime Crisis,” National Bureau of Economic Research Working Paper No. 16175, July 2010. Accessed at [https://fisher.osu.edu/blogs/efa2011/files/REF\\_1\\_3.pdf](https://fisher.osu.edu/blogs/efa2011/files/REF_1_3.pdf), on June 2, 2013.



Under TILA, as amended by Dodd-Frank, the CFPB must act to ensure consumers are offered and receive residential mortgage loans on terms that reasonably reflect their ability to repay the loans and that are understandable and not unfair, deceptive, or abusive.<sup>2</sup> After the role played by unscrupulous brokerage firms in the recent financial crisis, it is necessary to step up regulatory scrutiny of their dealings with consumers.

*The Proposed Underwriting Standards Do Not Fully Assess the Creditworthiness of Non-Traditional Borrowers*

Greenlining understands the need for a temporary provision for ATR as more permanent regulations are discussed and implemented. It is an imperfect but necessary solution to use a proxy such as the eligibility requirements set by the government-sponsored enterprises (GSEs) and various federal agencies programs. Greenlining agrees with the CFPB that these rules need to be adapted to suit QMs.

The rule states that mortgages can qualify as QMs by creditors using 1) an underwriting recommendation provided by one of the GSEs , 2) the automated underwriting systems (AUWs) or written guide of certain federal agencies (HUD, VA, USA, and RHS). Overall, we agree with the direction the CFPB is heading in its proposed amendments. Because the GSE and agency underwriting requirements are overly invasive and administratively burdensome, their technical, bright-line rules should be relaxed. For example, we support the CFPB's proposal to remove the requirement that creditors determine the probability of continued employment. Jobs such as those that require unskilled labor are much less likely to give documented assurance of the borrower's continued employment. We agree with the CFPB that it should suffice that there is confirmation of employment and no indication that employment will cease.

But even with the CFPB's proposed amendments, we are concerned by the rigidity of AUWs and agencies' written guides. We suggest taking the CFPB's adaptations a step further by making the underwriting process for QMs more responsive to the needs of underserved

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<sup>2</sup> TILA, section 105(f), 15 U.S.C. 1604(f).



borrowers. These individuals may be unbanked. They may have non-traditional sources of income or unconventional methods of paying bills.

Immigrants, for example, are much less likely to have opened a bank account if they have experienced a financial crisis in their country of origin.<sup>3</sup> They therefore are less likely to have had the opportunities to build up a positive credit score.

As another example, low-income households experience more frequent mobility and instability.<sup>4</sup> The proposed rule states that to analyze the stability of rental income for the purposes of determining a borrower's debt-to-income (DTI) ratio, creditors need a current lease or rental agreement. In the absence of that, there must be a rental history of at least 24 months with no "unexplained gaps." (Examples of "explained" gaps are absences caused by the renter's student or military status.) Because low-income individuals are often in less stable household structures, they may rent from family or others through agreements that are more inconsistent or informal.

Greenlining suggests adopting a more common-sense approach to determining DTI that allows lenders to factor in non-traditional sources of income or rental payments. We support maintaining the current rules as guidelines, rather than bright-line rules. We recommend adopting language that instructs lenders that finding reasonable equivalents to the guidelines are acceptable. Lenders, who are already required to make their DTI determinations in "good faith," should have the flexibility necessary to make a fair and holistic examination of potential borrowers.

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<sup>3</sup> Una Okonkwo Osili and Anna Paulson. "Bank Crises and Investor Confidence," Federal Reserve Bank of Chicago WP 2008-17, November 28, 2008. Accessed at

[http://www.chicagofed.org/digital\\_assets/publications/working\\_papers/2008/wp2008\\_17.pdf](http://www.chicagofed.org/digital_assets/publications/working_papers/2008/wp2008_17.pdf), on June 2, 2013.

<sup>4</sup> Rebecca Cohen and Keith Wardrip. "Should I Stay or Should I Go? Exploring the Effects of Housing Instability and Mobility on Children," Center for Housing Policy, February 2011. Accessed at

<http://www.nhc.org/media/files/HsgInstablityandMobility.pdf>, on June 2, 2013.



## **Further Suggestions for Improving QMs**

### *Urge the Agencies to Adopt a Unified Definition of a QM*

The temporary definition of QM adopted by the CFPB will sunset in seven years after its effective date, unless authorized agencies create their own QM standards, or GSE conservatorship ends for GSE-eligible loans. HUD, VA, USDA, and RHS all have authority under the Dodd-Frank Act to define QMs for their own loans, creating the potential for conflict and confusion.

As things are, many financial institutions object to provisions of Dodd-Frank as being too burdensome. In the future, as financial institutions are required to undergo increasingly active regulatory scrutiny, it will be important to have a single, clearly articulated rule. We urge the CFPB to take a collaborative leadership role in ensuring that the agencies adopt a unified definition of QMs.

## **Conclusion**

Communities of color were among the hardest hit by the mortgage crisis. Many of them were disproportionately steered into subprime mortgages.<sup>5</sup> Now, even as we are seeing some glimmers of recovery across different sectors, their ordeal is far from over. We therefore offer these recommendations: encourage states to enact additional consumer protections for their residents, broaden the definition of “affiliate” for purposes of small servicer status, change underwriting standards to more fully assess the creditworthiness of non-traditional borrowers, and urge the agencies to adopt a unified definition of a qualified mortgage.

As the CFPB continues implementing and refining the consumer protection rules promulgated in January, Greenlining welcomes continued opportunities to comment on issues that impact communities of color.

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<sup>5</sup> “Income is No Shield Against Racial Differences in Lending: A Comparison of High-Cost Lending in America’s Metropolitan Areas,” National Community Reinvestment Coalition, July 2007. Accessed at [http://www.ncrc.org/images/stories/mediaCenter\\_reports/ncrc%20metro%20study%20race%20and%20income%20disparity%20july%2007.pdf](http://www.ncrc.org/images/stories/mediaCenter_reports/ncrc%20metro%20study%20race%20and%20income%20disparity%20july%2007.pdf), on June 2, 2013.